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March 13, 1998

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REC-11

MAR 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket 97-122
Fort Lee, NJ
Pomona, NY
Monticello, NY

Dear Ms. Salas:

Transmitted herewith on behalf of Monticello Mountaintop Broadcasting, Inc., is the original with six copies of its Proposed Findings of Fact and Conclusions of Law in the above-referenced proceeding.

If any further information is needed, please communicate with the undersigned.

Yours very truly,

James P. Riley

Counsel for Monticello Mountaintop Broadcasting, Inc.

JPR:deb

Enclosures

cc: The Honorable Arthur I. Steinberg (By Hand Delivery w/Enclosure)
Administrative Law Judge
Alan Aronowitz, Esquire (By Hand Delivery w/Enclosure)
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ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

07/21/98

MAR 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:)	
)	
GERARD A. TURRO)	MM Docket No. 97-122
)	
For Renewal of License)	File Nos. BRFT-970129YC
for FM Translator Stations)	BRFT-970129YD
W276AQ(FM), Fort Lee, NJ, and)	
W232AL(FM), Pomona, NY)	
)	
MONTICELLO MOUNTAINTOP)	
BROADCASTING, INC.)	
)	
Order to Show Cause Why the Construction)	
Permit for FM Radio Station WJUX(FM),)	
Monticello, NY, Should Not Be Revoked)	

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

MONTICELLO MOUNTAINTOP BROADCASTING, INC.'S
PROPOSED FINDINGS OF FACT
CONCLUSIONS OF LAW

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SUMMARY

In this filing Monticello Mountaintop Broadcasting, Inc., demonstrates that the record evidence, weighed with recognition that the burdens of proceeding and proof are on the Mass Media Bureau, and construed under applicable legal standards, warrants determinations in favor of Monticello Mountaintop Broadcasting, Inc., on Issues 5, 6 and 7, and therefore, on ultimate Issue 8. Moreover, a grant of Monticello Mountaintop Broadcasting, Inc.'s pending license application is now warranted.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re:)	
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Permit for FM Radio Station WJUX(FM),)	
Monticello, NY, Should Not Be Revoked)	

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

**PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Monticello Mountaintop Broadcasting, Inc., by counsel, hereby submits its Proposed Findings of Fact and Conclusions of Law ("PFC") in the above-captioned proceeding.

I. PRELIMINARY STATEMENT

This PFC is filed following the trial of a case designated for hearing in a Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing ("HDO").¹

¹In re Gerard A. Turro and Monticello Mountaintop Broadcasting, Inc., FCC 97-137, rel. April 17, 1997.

The HDO recites that the Commission received a complaint from Universal in February 1995 making allegations against Turro and Weis. *Id.*, par. 6. The HDO states that “[a]s a result of the information received [*i.e.*, the Universal complaint], the Commission conducted an investigation into the relationship of Turro and his FM translator stations with MMBI, its sole principal, Wesley R. Weis (“Weis”), and WJUX.” *Id.*, par. 7. The HDO contains, *inter alia*, assertions about a field investigation of Turro's and MMBI's facilities, and about written inquiries to MMBI and Turro and their responses.

In the HDO, the Commission stated that “the commonality of facts and issues involving these stations [W276AQ, Ft. Lee, NJ, and W232AL, Pomona, NY, licensed to Gerard A. Turro (“Turro”), and WJUX (FM), Monticello, NY, under permit to Monticello Mountaintop Broadcasting, Inc. (“MMBI”)] require [*sic*] that both Turro and MMBI be made parties to a consolidated proceeding.” *Id.*, par. 2. Having so concluded, the Commission designated for trial on four issues Turro's renewal applications, as to which issues the Mass Media Bureau (“Bureau”) was assigned the initial burden of going forward with the introduction of evidence and Turro was assigned the burden of proceeding and the ultimate burden of proof. *Id.*, pars. 21-22. It designated for trial four other issues pursuant to the Order to Show Cause to MMBI why the WJUX (FM) permit should not be revoked, as to which issues the burden of proceeding with the introduction of evidence and the ultimate burden of proof were placed upon the Bureau. *Id.*, par. 24.²

²In addition to Turro and MMBI, a third private entity, Universal Broadcasting of New York, Inc. (“Universal”), was made a party to the hearing and proceeded jointly with the Bureau against Turro and MMBI.

The trial was conducted, as directed by the Commission, as a consolidated proceeding. While the subject matter of some exhibits and some testimony make it evident that those exhibits or testimony are pertinent to only Turro issues or MMBI issues, the parties offering exhibits and witnesses were not required to identify such as being limited to certain designated issues, and, in fact, many if not most witnesses and exhibits are pertinent to more than a single issue. In total, over 80 exhibits were received in evidence, and 1,801 pages of transcript were accumulated during nine days of trial from December 2 to December 12, 1997. The ensuing Proposed Findings, while arranged under what were judged to be appropriate issues and headings, are in many cases supportive of conclusions derived under more than one issue.

II. PROPOSED FINDINGS OF FACT

BACKGROUND

1. Monticello Mountaintop Broadcasting, Inc. ("MMBI") is the permittee of WJUX(FM), Monticello, New York ("WJUX").³ Wesley R. Weis ("Weis") is the sole shareholder and President of MMBI. MMBI Ex. 1, p. 1. He has been engaged in various businesses in the broadcast radio industry for many years, including equipment sales; tower and antenna erection, sales, and service; and antenna site management. *Id.* Prior to acquiring the construction permit ("CP") for WJUX, Weis had been a part owner of FM translator stations but had never been the owner or licensee of a broadcast radio station. *Id.*

³Unless the context requires otherwise, the Monticello FM station permitted to MMBI will be referred to as WJUX. Its call sign was WXTM when the unbuilt CP was acquired by MMBI.

2. Gerald A. Turro ("Turro") produces radio programming using the name Jukebox Radio Network ("Jukebox Radio"). Turro previously operated Jukebox Radio through Bergen County Community Broadcast Foundation ("BCCBF"), an entity he controls. Tr. 1943. He is the licensee of FM translators at Fort Lee, New Jersey ("Fort Lee Translator") and Pomona, New York ("Pomona Translator"). In January 1991, Turro filed a request for a formal declaratory ruling as to whether it was permissible for a translator licensee, whose translator was located beyond the 1mV/m contour of its primary station, to broker air time on the primary FM station. Tr. 2057, Bur. Ex. 1, p. 6. Later that year, the FCC responded that such an arrangement was permissible ("Stewart Ruling"). *Id.*, Bur. Ex. 1, pp. 8-9.

3. Weis has known Turro for many years, perhaps as long as 20 years. MMBI Ex. 1, p. 1. They met during the course of work which Weis's businesses did work for radio stations, while Turro was employed in the radio industry. *Id.* At one point Turro and Weis became partners in the ownership of the Pomona Translator. *Id.*; Tr. 1337. For a time, Turro and Weis used the same attorneys. Tr. 1846. In 1990 or 1991, Jukebox Radio became a tenant in a building in Dumont, New Jersey which Weis has owned since December 1986 ("Jukebox Radio Studio"). Tr. 1396, 1435-36.

ISSUE 5: MAINTENANCE OF MAIN STUDIO FOR WJUX

4. WJUX's community of license, Monticello, and Liberty, the community of license of WVOX(AM) and WVOX-FM (together "WVOX"), are located about ten miles apart in Sullivan County, New York, and are the two largest villages in the county, with populations of 7,000 and 5,000 respectively. Tr. 912. Ferndale, where the WJUX and WVOX

main studios are located, is immediately adjacent to Liberty. Tr. 916. The WJUX studio in Ferndale is within the WJUX 70 dBu contour. Bur. Ex. 11, p. 174. Sullivan County has, for many years, been a second home community for people from the New York metropolitan area. Tr. 912.

5. The WJUX main studio is located in a building which also houses the WVOS main studio. Tr. 916. WJUX is a tenant of the owner of WVOS. *Id.* There currently are, and were in 1995, separate quarters in the building for the WJUX and WVOS main studios. *Id.* In 1995, WJUX's main studio was on the first floor, with WJUX's studio at one end of the hall and WVOS's studio at the other end. *Id.* The WJUX main studio was previously used as a spare production studio for WVOS. Tr. 1022. MMBI recently built an enhanced main studio for WJUX, within the same building it has been occupying, on the ground floor. MMBI Ex. 1, p. 7-8.; Tr. 916, 985-86.

WJUX'S PROGRAM ORIGINATION CAPABILITY

6. Weis believes that MMBI has not violated the FCC's rules requiring the maintenance of a main studio, with the possible exception, for a period of time, with regard to local telephone service. MMBI Ex. 1, p. 5. MMBI has always had a main studio properly located under the rules of the FCC. *Id.* The studio was equipped to originate programming and deliver that programming to the WJUX transmitter site for broadcast. *Id.* Weis is experienced in the design and operation of radio stations and knows from personal observation made before the inspection that WJUX was fully capable of originating programming from its main studio direct to its transmitter without the need for anyone going to the transmitter site. *Id.* In addition, the WJUX transmitter was capable of being controlled

from WJUX's main studio by telephone dial-up. *Id.* Without any significant change to WJUX's equipment having been made subsequent to the inspection, musical programming later was originated from WJUX's main studio when the program feed from the Jukebox Radio Studio was severed, without anyone having to first visit the WJUX transmitter. *Id.*

7. Herman Hurst ("Hurst"), MMBI's consulting engineer first visited the WJUX main studio on July 6, 1995, and, on that date, took the pictures in MMBI Ex. 2. Tr. 1919. Hurst testified that "The WJUX (FM) main studio is equipped with a Sparta 8-channel console, a reel-to-reel tape machine, cassette deck, cart machine, turntable, microphone and audio processing equipment. In addition, an EBS receiver and alert tone generator is also located at the WJUX(FM) studio. The WJUX(FM) main studio has programming capability, production capabilities and remote control capability to the main transmitter." MMBI Ex. 2, p. 2. Mr. Hurst has no reason to believe that the capabilities he observed on July 6, 1995, did not exist prior to April 13, 1995, the date of the FCC inspection of WJUX's studio and transmitter. MMBI Ex. 2, p. 1. Carol Montana ("Montana") testified that there were no physical changes to the WJUX main studio after the FCC inspection. Tr. 892. Turro testified that he personally inspected the main studio equipment and verified that it was all working at the time WJUX was constructed in October 1994. Tr. 1794-95.

8. On April 13, 1995, an FCC inspector, Serge Loginow ("Loginow"), conducted an inspection of WJUX's main studio. Tr. 336-37. Loginow testified that, at the studio, Blabey and Montana readily identified themselves to him as WJUX employees, Blabey as General Manager and Montana as Public Affairs Director. Tr. 484. Blabey was on the premises, but outside the building, when Loginow arrived. Tr. 960-61. Montana was at the

WJUX main studio when Loginow arrived. Tr. 848-49. She remembers talking with him in her office, but does not recall what they talked about. Tr. 849-50.

9. During the inspection, Blabey told Loginow he wanted to call WJUX's chief operator, Turro. Tr. 962. Blabey called Turro's office, was told that Turro was out of town, and that Turro's office would contact Turro. *Id.* Sometime later, Turro called WJUX's main studio and Blabey put him on the phone with Loginow. Tr. 962-63. Turro spoke with Loginow for about five minutes. Tr. 1964, 1743. Turro asked Loginow if he had any questions for him. Tr. 1743. Loginow asked if Turro was the chief operator of WJUX and Turro said he was. Tr. 1743, 1964. Loginow also asked Turro about remote control. *Id.*; See P.F. 43. Weis and Turro were at the time at an NAB convention in Las Vegas, and Turro found Weis there and told him there was an inspector at WJUX. MMBI Ex. 1, p. 3; Tr. 1408.

10. Loginow asked to see the WJUX main studio and Blabey took him there, showed him equipment, and answered all his questions. Tr. 961. Loginow claimed to have been in the WJUX studio room proper only "very briefly," but acknowledged that in the studio he saw a control board of the type typically found in a broadcast studio with origination capability, as well as a microphone and tape machines. Tr. 475-76. Loginow testified that he did not examine the wiring to see if the equipment was connected, and had no reason to think the microphone and tape machines were not connected to the control board. Tr. 476. He did not test the program origination equipment to see whether it could create programming suitable for broadcasting. Tr. 489-90.

11. Blabey informed Loginow that the equipment at WJUX's main studio enabled WJUX to originate programming from the studio. Tr. 1029. Blabey testified that he knew

that the equipment was capable of originating programming and the board, microphones, and tape recorders all worked as the equipment had been used for WVOS. Tr. 1029-30.

12. Blabey explained to Loginow how programming could be originated from WJUX's main studio and transmitted to WJUX's transmitter. Tr. 1027. Although Loginow claims to have been told by Blabey that a change of cabling had to be made at the WJUX transmitter site to enable broadcasts to originate from the WJUX studio (Bur. Ex. 16, p. 254; Tr. 474), Blabey testified that he never told Loginow that to originate programming one had to go the WJUX transmitter site and make a change in cabling at the patch panel to connect the transmitter to the main studio. That has never been the case. Tr. 1013-14. Blabey instead recalls that Loginow asked "How can you put this studio on the air from here?" and he responded "You have to throw a switch in the transmitter room." Tr. 1027-28. Blabey meant the WVOS(AM) transmitter room, which is 10-15 feet down the hall from WJUX's studio room, but cannot say whether he said the AM transmitter room or just the transmitter room. *Id.*

13. Blabey stated that, in the WVOS(AM) transmitter room, there has always been a switch or switch patch where one could take the WJUX main studio feed and patch it out to the WJUX transmitter by connecting it to the line leading from the studio building to the transmitter site. Tr. 1011-12, 1014, 1027. Blabey did not demonstrate to Loginow how this was done, nor show Loginow the patch, because Loginow did not ask. *Id.* Blabey believes that it should have been obvious that, if one is in a studio building and running a line from the building to a transmitter, one would put the patch at the studio, not at the transmitter.

Tr. 1027. Even Loginow found the need to make a change at a transmitter site 15 minutes away from a studio in order to put the studio on the air “highly unusual.” Tr. 477.

14. Consistently with Blabey, Montana testified that at the time of the inspection, one would have been able to originate programming from WJUX’s main studio without going outside the studio building. Tr. 892. At that time there was a switch by the WVOs(AM) transmitter, which is in the WJUX main studio building, 10-15 feet down the hall from WJUX’s main studio, that enabled programming to be originated from WJUX’s main studio. Tr. 892, 895-96. Montana testified that the switch was in the transmitter rack, on a piece of equipment in the back that had WVOs equipment above and below it. Tr. 895-96. She testified that to originate programming from the WJUX main studio one needed only to place the switch in the “up” position, and once the switch was thrown, the WJUX main studio would operate the same as any other radio station studio. Tr. 897-98.

15. Blabey testified that there is no patch panel at the WJUX transmitter site. Tr. 1014. Loginow stated that, if there had been one, it would have been in the enclosed building housing the transmitters. Tr. 478. Loginow said he entered that building, made observations, and recalls observing remote control equipment there, but did not see a patch panel there. Tr. 478-79. Although Blabey accompanied Loginow to the WJUX transmitter site, Loginow did not ask Blabey while there to show him the patch panel in which Loginow understood cabling had to be changed to put the WJUX studio on the air. Tr. 474, 477.

16. Both WJUX’s public affairs and public service announcements are currently, for reasons of economy and efficiency, fed to the WJUX transmitter from the Jukebox Radio Studio. MMBI Ex. 1. p. 7-8. This has achieved economy because MMBI has not had to engage

another staff person to come to the MMBI studios to replay the public service programs on MMBI's tape equipment, produce the public service announcements on MMBI's production equipment, and feed the programs and announcements from WJUX's main studio to its transmitter. *Id.* That has, however, always been technically possible. *Id.*

WJUX'S PROGRAMMING

17. WJUX has broadcast programs to serve WJUX's community of license and service area. Quarterly issues and programs lists for WJUX show this program service. MMBI Ex. 1, p. 10; MMBI Ex. 3. Every indication Weis has received over the years is that WJUX's total program service is highly valued in Sullivan County. MMBI Ex. 1, p. 10; Tr. 1433. Turro estimated that, currently, more than 60% of WJUX's non-entertainment programming (*i.e.*, news, weather, public service announcements, public affairs programming, exclusive of commercial time and music programming) is directed to Sullivan County. Tr. 2048-49.

18. Montana is WJUX's Public Affairs Director. Tr. 822-23, 856-57. As such, she makes sure that public service announcements ("PSAs") of interest to the community are broadcast on WJUX. Tr. 822. For this purpose, she composes a PSA bulletin board. Tr. 824. She has lived in Sullivan County for almost 20 years and people know that she works for WJUX and advise her of relevant happenings for broadcast on WJUX. Tr. 822-23. People also know to send PSAs to Montana and she gets PSAs addressed to WJUX. Tr. 825. The number of PSAs varies and sometimes there is a five page bulletin board. Tr. 824. The bulletin board is limited to not-for-profit organizations and consists of five categories: arts, meetings, general, Board of Education, and defensive driving. Tr. 825-26. On most occasions

the bulletin board for WJUX and WVOS are exactly the same. Tr. 881-82. Montana prepares the bulletin board and faxes it to Jukebox Radio every other day. Tr. 822-24. Jukebox Radio handles production of the PSAs and determines which items on the bulletin board to air. Tr. 827-28. Montana designates on the bulletin board, or calls the network regarding, PSAs that are particularly important and should be aired, and the network has followed her suggestion on almost every occasion. Tr. 827. Montana makes sure that PSAs are broadcast on WJUX by listening to them. Tr. 823.

19. Blabey makes the decisions on putting emergency announcements regarding Sullivan County on WJUX. Tr. 979-80. For example, during a recent snow storm, when Blabey received a call from the Sullivan County Manager advising that he was closing all roads in the county, Blabey called Jukebox Radio to advise that he had an emergency message to air on WJUX, prepared the message, and faxed the message to the Jukebox Radio Studio to be originated. Tr. 980-81.

20. Public affairs programming produced in Sullivan County for broadcast on WJUX is forwarded to Jukebox Radio. Tr. 1433. Blabey sends the programming to the Jukebox Radio network studio. Tr. 1433. Some of the programming is originally produced by Blabey for broadcast on WVOS, also located in Sullivan County. Tr. 954, 1434. Jukebox Radio has called WVOS's news director or assistant director and requested a Sullivan County news story. Tr. 952. For example, Blabey testified that on election night the network obtained election results from WVOS. *Id.* Other than public service announcements, between October 1994 and October 1995, WJUX did not air programs directed at residents of

Sullivan County that did not also appear on WVOS. Tr. 957. There were public service announcements that were carried on WJUX and not on WVOS. *Id.*

21. Weis asked Blabey to come up with ideas for public service programs and Blabey did so. Tr. 996. The program "People Who Make a Difference" was produced locally in WJUX's main studio. MMBI Ex. 7, p. 3; Tr. 971-72, 1009. "People Who Make a Difference" was broadcast by WJUX at least as early as February 2, 1995. MMBI Ex. 3, p.7. The program was broadcast on both WJUX and WVOS and a newspaper version appeared in the Sullivan County Democrat, a weekly newspaper. Tr. 1009-10. Neither WVOS nor WJUX paid the producer for the programs. Tr. 1024. A number of programs were recorded on the same day and Blabey sent tapes of the programs to Jukebox Radio for broadcast on the network. Tr. 1022, 1024. The program likely was recognized by WVOS listeners as a WVOS program, and by WJUX listeners as a WJUX program. Tr. 1025.

22. The program "Open Mike" was originally aired on WVOS and later rebroadcast on WJUX. Tr. 955. "Open Mike" provides a platform for community leaders to appear and be questioned regarding their areas of interest and take telephone questions from listeners. *Id.* When the program aired on WJUX, it was on a tape-delayed basis. Tr. 956. WJUX did not pay WVOS for the programming, except that Blabey negotiated with Weis a \$10 per program talent fee for WVOS's news director, the host of the "Open Mike" program. *Id.* Blabey thinks that WVOS receives a benefit because politicians are more likely to accept an invitation to appear on the program if they will be heard on two stations. *Id.* Blabey does not think "Open Mike" was on WJUX when WJUX first went on the air, but does not recall

how long thereafter it began. Tr. 995-96. The first time "Open Mike" appears in the WJUX issues and programs lists is May 1996. MMBI Ex. 3, p. 17; Tr. 997.

23. Montana testified that the only listener complaint WJUX has received regarding its programming was that WJUX did not play enough Perry Como music. Tr. 884-85. She stated she called Jukebox Radio regarding the complaint and the network responded by adding a Perry Como show. Tr. 884-85.

24. Wilson LaFollette ("LaFollette"), a consulting engineer retained by Universal, testified that he listened to Jukebox Radio's programming for a short period of time on February 2, 1995. Tr. 680. While measuring the Fort Lee Translator's signal strength, he listened to the translator signal on and off for a total of an hour and one half, spaced over a three-hour period. Tr. 680. He stated that, during the time he listened to the translator, most of what he heard was recorded music. Tr. 696. He also heard what appeared to be ads for the Bergen County area and did not recall hearing any program content related to New York State, but couldn't be sure. Tr. 690-91. He considered an ad oriented to Bergen County if it included the words "Bergen County" and, if he heard an ad without those words, was unable to determine the geographic area to which it was targeted or its source. Tr. 691-93. He does not know whether the programming during the remainder of the three hour period that he did not hear dealt with Bergen County or included public service announcements and other programming for Sullivan County. Tr. 684-85.

25. Jukebox Radio's program director, David Lynch ("Lynch"), who is familiar with the network's programming, testified that, in stating in his written testimony that a majority of the network's public service programs are centered around Bergen County (Turro

Ex. 5, pp. 3-4), he intended to include programs that address issues of interest and concern to all communities throughout the nation, including Sullivan County. Tr. 1255, 1258, 1263. He testified that many of the programs listed in WJUX's issues programs lists (MMBI Ex. 3, pp. 10 *et seq.*) are such programs of national interest, not specifically oriented towards Bergen County. Tr. 1256-59. Lynch was employed beginning in July 1995, during the time the programs aired and was familiar with them. Turro Ex. 5, p. 1, Tr.1258-59. He also testified that he obtained experience evaluating public affairs programming at previous radio stations and, currently, goes out and ascertains specific community needs and interests in both Bergen and Sullivan Counties. Tr. 1262-64. Based upon his ascertainment of Sullivan County concerns, he testified that the programs of national interest aired on the network address the needs of Sullivan County communities. Tr. 1263-64.

26. All the commercial spots broadcast on WJUX have been sold and originated by Jukebox Radio, with the exception of local political spots sold in October or November 1997, Tr. 928, 2026. Turro testified that, in the last two years, 10% of the ad buys on the network have been from businesses located in Sullivan County. Tr. 2026, 2103-04. In addition, regional and national businesses buy 45% of the ad inventory. *Id.* Since regional and national advertisers are trying to sell products in both Bergen County and Sullivan County, in addition to the 10% of ad buys directly from businesses located in Sullivan County, another 45% of the ad buys are by businesses interested in attracting revenues from Sullivan County. Tr. 2105. Approximately 45% of advertising buys come from Bergen County businesses. Tr. 2026, 2103-04. Thus, when Turro stated that 80-90% of Jukebox Radio commercial advertisements

are focused towards Bergen County/Rockland region businesses as opposed to Sullivan County businesses, he included the regional and national advertisers. Tr. 2026, 2048.

27. The only complaint received by the FCC that implicates the operation of Station WJUX was received from Universal. MMBI Ex. 4, pp. 2, 6. The FCC has received no complaints or claims that any political candidate has ever sought to purchase time for a political advertisement which would be heard over WJUX and been refused. *Id.* The FCC has received no complaints or claims that any Sullivan County or Monticello group or organization has ever sought to place a public service announcement that would be heard over WJUX and been refused. *Id.* The FCC has received no complaints or claims that any Sullivan County or Monticello government organization or authority has ever sought to have an emergency announcement placed so that it would be heard over WJUX and been refused. MMBI Ex. 4, pp. 3, 7. Neither the Bureau nor Universal offered evidence of any issue, need or interest of Monticello or Sullivan County that had not been addressed in the programming broadcast by WJUX. Record, *passim*.

THE WJUX STAFF

28. The WJUX main studio has been adequately staffed by Blabey, WJUX's General Manager, and Montana, WJUX's Public Affairs Director, both of whom are based full time in WJUX's main studio building. MMBI Ex. 1, p. 6.; Tr. 1394-95. Although they have other employment with WVOS, which are also located in the building, they each have more than adequate time to perform their duties for WJUX. MMBI Ex. 1, p. 6.

29. Blabey is an owner of Mountain Broadcasting Corporation ("MBC"), the licensee of WVOS, and acts as the general manager. Tr. 909-10, 916. During normal business

hours, there are anywhere from one to four employees at WVOs, who are supervised by Blabey. Tr. 949-50.

30. Blabey has additionally been WJUX's General Manager since WJUX commenced broadcasting. Tr. 909-10, 916, 948. Blabey's agreement with Weis was that Blabey would be at the main studio during normal business hours. *Id.* This did not require extra effort since he was already doing that for WVOs. *Id.*; Tr. 946-47. Blabey believed that being the general manager of WJUX would work as he was already performing many functions of a general manager for WVOs and it would not be overly burdensome to him. Tr. 946-47. Blabey's written agreement with Weis also provided that Blabey would be available to Weis during normal business hours. *Id.*

31. Blabey stated that since Weis does not live in Sullivan County and is not part of the Sullivan County community, he represents the community to Weis and they discuss the county's economy and county happenings. Tr. 914. Blabey stated that he also represents Weis and WJUX to the community. *Id.* Blabey is involved in the community on behalf of both WJUX and WVOs and people in the community associate him with both stations. Tr. 932. For instance, he is a member of the Chamber of Commerce on behalf of both WVOs and WJUX, with WJUX having a separate membership. Tr. 933. He receives two copies of correspondence from the Chamber, one for MMBI and the other for WVOs, and when he goes to chamber meetings, he is there in two capacities. Tr. 933. He has done promotional announcements for the Chamber on both WVOs and WJUX, such as the Chamber of Commerce's annual summer air show, and volunteers his time at Chamber events representing both stations. *Id.* He is the past president of the Chamber of Commerce Tr.

914. Additionally, Blabey is on the local emergency planning commission representing both WJUX and WVOS. Tr. 914. There is no community organization of which he is a member for, or in which he represents, WJUX exclusively or WVOS exclusively. Tr. 934.

32. Blabey characterized his role in hiring and firing at WJUX as recruiting and recommending employees for Weis to put on the payroll. Tr. 914. Blabey has never recommended anyone to Weis that Weis hasn't put on the payroll. *Id.* With the exception of Alan Kirschner, WJUX's current chief operator, everyone who works for WJUX was recommended by Blabey. *Id.* For example, Blabey suggested that Weis hire George Spicka as WJUX's local engineer. Tr. 937-38.

33. On an average day, the actions that Blabey takes on behalf of WJUX include answering the phone, going through the mail, handling inquiries that he can handle himself, sending or faxing to Weis in New Jersey matters that need Weis's attention (generally involving financial matters), arranging for programming, and making decisions. Tr. 915. He is familiar with WJUX's issues programs lists. Tr. 997. He prepares the Arbitron forms for WJUX. Tr. 1017. The routine activities Blabey performs on behalf of WJUX don't take a lot of his time each day. Tr. 915. Blabey or others in the building are able to tell that WJUX's service has been interrupted because they monitor it periodically on the radio in the offices and because listeners call in. Tr. 974. When Blabey learns that WJUX is off the air, he attempts to get the station back on the air by calling an engineer, cranking up the generator, or calling the power company. Tr. 976-77. During this type of crisis, he tries to look out for both his own and Weis's interests. *Id.*

34. Weis and Blabey have an arrangement under which Blabey will receive a commission for sales made locally for commercials on WJUX. MMBI Ex. 8; Tr. 920, 1001-02. Blabey has sold time under the agreement and it is still in effect. Tr. 920, 1003. During the first year of the agreement, Blabey made sales presentations, but did not succeed in making sales. *Id.*

35. In February 1995, Blabey sought to engage a salesperson other than himself to sell time locally for WJUX. MMBI Ex. 9; Tr. 1005. Weis approved the hiring of Stan Silverstein to make local sales for WJUX, with compensation on the basis of commissions. Tr. 1005. He worked only for WJUX, and not for WVOs. Tr. 1026. Silverstein made sales presentations for WJUX for a short time, but did not sell any ads. *Id.* Blabey believes that selling advertising on WJUX is difficult since WJUX is not among the top four stations in Sullivan County and, in a small market such as this one, typically many businesses will only advertise on the top station or the top two stations in the market. Tr. 920-22.

36. Montana is WJUX's Public Affairs Director. Tr. 822-23. She stated that she is employed full time by WVOs and part time by WJUX. Tr. 816. As WVOs's business manager, she handles the books, sells ads, enters time orders, handles the billing, does the bookkeeping, participates in programming, prepares the broadcast log, prepares the payroll, gives out prizes, and acts as receptionist. *Id.*; Tr. 948-50. Blabey described her as a very competent individual who holds the WVOs operation together. Tr. 950.

37. Montana has been employed at WJUX since late October 1994. Tr. 816-17. When she was employed, Blabey told her she would work the same hours for WJUX that she worked for WVOs. Tr. 816-17. He said he had a part time position available to staff

WJUX's office, answer its phones, deal with the people who walked in, pick up and route its mail, and other similar things. *Id.* Montana handles numerous tasks for WJUX each day. Tr. 819-20. She goes to the Post Office at 9:00 a.m., Monday through Friday, to pick up the mail for both WVOs and WJUX. Tr. 819-20. She gets back to the office at 9:15-9:20 and distributes the mail. Tr. 819-20. If there is mail that needs attention from Weis or Blabey, she makes sure that they see a copy of it. Tr. 819-20. She brings bills to the attention of Blabey and Weis for payment and handles petty cash. Tr. 819-20. She deals with walk-ins. Tr. 819-20. Throughout the day, the phone rings for WJUX and she handles the callers' requests. Tr. 819-20. Montana monitors WJUX broadcasts when going to and from work but not during the day when she is at work at the WJUX main studio building. Tr. 840-41. When there is a program interruption at WJUX, Montana determines whether there is a known problem at WJUX's transmitter site or calls WJUX's engineer, George Spicka. Tr. 839-41.

38. As WJUX's Public Affairs Director, Montana represents WJUX in the community and makes sure that public service announcements ("PSAs") of interest to the community are broadcast on WJUX. Tr. 822-23. Montana said she does not belong to any civic groups or charitable organizations for the specific purpose of representing WJUX, but has lived in Sullivan County for almost 20 years and people know that she works for WJUX and advise her of relevant happenings for broadcast on WJUX. Tr. 822-23. Montana stated that people know to send PSAs to her and she receives PSAs addressed to WJUX. Tr. 825. Montana makes programming choices regarding public service announcements and prepares

the PSA bulletin board for WJUX. Tr. 824-26. Montana receives the quarterly programs issues lists for WJUX once they are prepared and puts them in the WJUX public file in the Monticello Public Library. Tr. 856-57.

39. When WJUX began broadcasting, Turro was the Chief Engineer of WJUX, but was not compensated because Weis believed that was precluded by the FCC's FM translator rules. Tr. 848, 1423. Turro served as the Chief Operator until he was replaced by Alan Kirschner in approximately June 1995. Tr. 1424. Kirschner works for Weis and is currently WJUX's Chief Operator. MMBI Ex. 1, pp. 6-7. Tr. 937-38. 940, 965-66.

40. George Spicka is WJUX's local engineer. Tr. 937-38. He was hired by WJUX in August 1995 to conduct weekly Emergency Action Notification System (EANS) tests and meter readings. Tr. 839. He is an employee on WJUX's payroll, not a consultant. Tr. 937-38. He does not also work for WVOS. *Id.* Spicka works one to two hours per week checking over the equipment and doing the EANS tests, and goes out to the transmitter site when necessary. *Id.* He is also on call since he lives two miles from the station, is semi-retired, and can come right over in an emergency. *Id.* Blabey called Spicka in to assist at the time of the FCC inspection. Tr. 939. When a fiber optic cable was cut and the Jukebox Radio program feed interrupted, which Montana believes was in the early summer of 1995, music was originated from the WJUX main studio by George Spicka playing a music tape for several hours. Tr. 858, 973.

41. Charles Martin is also an employee on WJUX's payroll. Tr. 974-75. Martin lives about 10 miles from WJUX's main studio and can be called in if Spicka is out of town.